

AMERICAN ARBITRATION ASSOCIATION

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In the Matter of the Arbitration between:

**FRATERNAL ORDER OF POLICE,
LODGE No. 5**

-AND-

**AWARD
AND OPINION**

CITY OF PHILADELPHIA, PA

Docket No. 14 390 01146-10

(Corporal Gail B. Newsome-Middleton; #8194 Five-day (5) Suspension)

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BEFORE: ERNEST WEISS, ARBITRATOR

APPEARANCES: For the Union: **MARK L. GELMAN, ESQ.
 JENNINGS SIGMOND, P. C.**

 For the City: **COLIN S. HAVILAND, ESQ.
 ASST. CITY SOLICITOR**

**ISSUE: Was the five-day disciplinary suspension of Corporal Gail B.
 Newsome-Middleton PR # [REDACTED] for just cause and if not, what
 shall be the remedy?**

PRELIMINARY STATEMENT

Having been selected in accordance with the provisions of the Collective Bargaining Agreement between the above parties, I conducted an arbitration hearing on May 5, 2011 at the offices of the American Arbitration Association in Philadelphia, PA, at which time the parties were afforded an opportunity to present evidence and argument in support of their respective positions.

BACKGROUND

Corporal, Gail Newsome-Middleton, Intake Unit Supervisor in the Internal Affairs Bureau and the grievant herein, received a five-day disciplinary suspension for "Insubordination Section 3.01: Refusal to obey proper orders from superiors."(J4) Her Notice of Suspension provided the following charge:

INSUBORDINATION, Section 3.01: Refusal to obey proper orders from superiors.

In that your duties as an Intake Unit Supervisor include receiving and reviewing all complaint forms (75-561) that come into Internal Affairs to determine their status (i.e., verbal abuse, physical abuse, etc.) before writing a brief synopsis. This synopsis is then forwarded with the 75-561 to Inspector C [REDACTED] D [REDACTED] for her review and approval. On 11/17/09, Inspector D [REDACTED] received a list of fifteen (15) Internal Affairs control numbers from complaints taken between November 7, 2009 through November 16, 2009. These fifteen control numbers were missing their 75-561's and synopses. You were ordered by Inspector D [REDACTED] to expedite these complaints and also to provide a memorandum explaining the delay in processing these complaints. Short13/thereafter, you came into Inspector D [REDACTED] office, stating, "Here they are."

When Inspector Dorsey reminded you that these needed to be expedited and that you needed to submit a memorandum indicating why there was a processing delay, you replied, "No," while dropping the pile of complaints on Inspector D [REDACTED] desk. While exiting the office, you added, "No, I won't do them...I won't do someone else's work." Inspector D [REDACTED] called for you to come back into the office but you left, slamming the door. You went into Chief Inspector D [REDACTED] office. Inspector D [REDACTED] followed you

into the office where a discussion was held about the backlog of 75-561's that needed to be processed. You were told that other than completing the Daily Attendance Reports, your other duties could wait so that you could immediately begin processing the missing 75-561's. You were further told that you weren't expected to complete all of them that day, as long as there was sufficient progress with their completion. You were told by Inspector D [REDACTED] that six or seven completed by the end of the day would be acceptable. You told both Chief Inspector D [REDACTED] and Inspector D [REDACTED] that you would not do them as ordered. As of November 25, 2009, you still had not processed these complaints.(J4)

POSITION OF THE CITY

The City argued in relevant part that the grievant was disciplined for just cause and asked that her grievance should be denied.

Chief Inspector C [REDACTED] D [REDACTED], Narcotics Bureau Command and formerly Inspector in the Internal Affairs Department, testified in relevant part that at the time in question herein, she was the grievant's immediate supervisor. The grievant was at the time and at present in her capacity of being in charge of the Intake Unit of the Internal Affairs Bureau.

She further testified that as a result of a reorganization of the Intake Unit in May, 2009 two civilian secretaries were transferred, with their existing duties, out of the Intake Unit.

There was a list of pending investigations that have not yet been initially processed and evaluated. In the absence of the two civilian secretaries who ordinarily perform the initial intake processing, the grievant was delegated by Chief D [REDACTED] to begin processing the complaints so that they can be assigned for investigation.

In November, 2009 on the day in question herein, Inspector D [REDACTED] was in her office. The grievant entered and slid the stack of forms onto the Inspectors desk and stated "I will not do them" and "It's not my job". She walked out of the

office allegedly slamming the door and walked into the office of Chief D [REDACTED] where Inspector D [REDACTED] found her and a discussion ensued regarding the grievant's refusal of the assignment. Chief D [REDACTED] suggested that the grievant begin to process a portion of the accumulated complaints but the grievant insisted that her regular work load will not permit her to do so.

Chief A [REDACTED] D [REDACTED] testified in relevant part that on the day in question the grievant came to him stating that "D [REDACTED] is after me". He also explained that the work dispute herein involved the processing of citizens complaints against Police Officers. When the grievant refused even to start processing the complaints, Chief D [REDACTED] initiated a memo for disciplinary action which resulted in the grievant's five-day disciplinary suspension and the instant grievance.

However, under cross examination Chief D [REDACTED] admitted that he has had second thoughts and is now not sure that discipline was warranted at the time and perhaps he should have talked to her again. He recalled that the staff was eventually "getting the work done." The work in question was actually completed on 11/18 or 11/19/09.

POSITION OF THE FOP

The FOP argued in relevant part that the Five day disciplinary suspension of the grievant was not for just cause, since the work in question was accomplished on time and therefore, there was no insubordination.

Corporal Newsome-Middleton testified in relevant part that in 2009 there was a drastic reduction in the intake room staff. Prior to the reorganization there were six employees one Lieutenant one Corporal one Police Officer and three civilian secretaries. The Grievant, Corporal Newsome-Middleton was in charge of the operation. After the reorganization there remained a total of three

employees. A reduction of 50% from the original staffing. The three transferred employees allegedly retained their previous duties but they were relocated to different location in the building. However, the grievant remained the Intake Supervisor. As a result of the transfers she found herself “drowning” in the workload.

The grievant insisted that when she was instructed to reduce the backlog herself she did not say “no” she said “I can’t”. However, she pointed out that once she was given help, the work in question was completed by 11/18 or 11/19, 2009. The fifteen cases, (U2) in evidence, were in fact completed.

The FOP concluded that there are many shades of refusing an order. Given the reduction in staff the grievant merely claimed that she can’t do it given her existing work load resulting from the staff reductions.

Therefore, the FOP argued that the grievance should be sustained since there was no just cause for the five-day disciplinary suspension. It asks that the grievant be made whole for the salary she lost, and that the discipline should be expunged from her record. It further asks that the arbitrator retain jurisdiction.

DISCUSSION AND OPINION

It is generally accepted in arbitration that even a minor economic disciplinary penalty, such as a five-day suspension without pay, must be viewed in the context of the particular circumstance and the proven fact pattern associated with the specific alleged transgression by the Officer involved.

As correctly argued before me by the FOP, in determining whether this economic punishment was for just cause, a number of factors must be considered including the nature of the alleged transgression and any other circumstance related

to the discipline, as it may impact on the traditional elements of just cause in this particularly hectic and frequently dangerous work environment.

The FOP argued without contradiction that the grievant has an otherwise unblemished disciplinary record.

Therefore, in deciding the merits of this particular discipline, I also considered the unusual circumstance that the grievant encountered resulting from a recent reorganization of the Intake Unit, where the transferred civilian clericals, whose work she was expected to supervise, were physically reassigned away from the Unit but supposedly maintained their previous duties. One of the two, M [REDACTED] F [REDACTED] was physically relocated into Inspector D [REDACTED] office and allegedly assumed some duties assisting Inspector D [REDACTED] in addition to her prior intake duties. This new arrangement could have contributed to the clerical backlog resulting in the confrontation culminating in the instant discipline.

The record made before me indicates that this instant disagreement was a singular event apparently resulting from the radical restructuring and reducing the previous availability of the grievant's clerical staff.

The record in fact indicates that the grievant was well regarded by her supervisor. In a Performance Report dated 3/13/09 Inspector D [REDACTED] describes the grievant's behavior in part as follows: "Since you have been under my command, you have executed your duties as Intake Unit Supervisor in an excellent manner..." This glowing report ends with: "Continue to strive for excellence"(U3)

However, after the restructuring of her clerical staff the grievant was in fact ordered to perform the additional clerical functions as well as her regular duties. In her written report to Inspector D [REDACTED] dated 11/10/09 she states in part: "I am overwhelmed with running the Operation Room along with my other duties."(C2) She further points out in her Memo that at the time of their transfer, the two

clericals "...would maintain their duties from different locations in the building...I took on these duties as a direct order from you."(C2)

Considering that the disputed work was in fact completed, this incident appears to be more a misunderstanding than a refusal of a proper order. Given the unblemished 17-year disciplinary record of the grievant and her excellent Performance Report prior to the incident in question, I must find that the five day suspension was not for just cause.

Therefore, having thoroughly considered all the evidence including the testimony, arguments and allegations of both parties, I have determined, for the above stated reasons that the five-day disciplinary suspension of Corporal Gail Newsome-Middleton was not for just cause and I make the following Award:

AMERICAN ARBITRATION ASSOCIATION

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In the Matter of the Arbitration between:

**FRATERNAL ORDER OF POLICE,
LODGE No. 5**

-AND-

AWARD

CITY OF PHILADELPHIA, PA

Docket No. 14 390 02182-09

(Corporal Gail B. Newsome-Middleton #8194 Five-day (5) Suspension)

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The undersigned arbitrator, having been designated in accordance with the Arbitration Agreement entered into by the above parties, and having duly heard the proofs and allegations of the parties, AWARDS as follows:

The grievance is hereby sustained.

For the above stated reasons, the five-day disciplinary suspension of Corporal Gail Newsome-Middleton #8194, PR# [REDACTED] was not for just cause.

The City is hereby directed to reimburse her the five-day lost salary and expunge from her record any reference to the suspension. Additionally, as requested, I hereby retain jurisdiction for the sole purpose of implementing this Award.



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ERNEST WEISS, ARBITRATOR

STATE OF: NEW JERSEY

COUNTY OF: SOMERSET

On this 25th day of May, 2011, before me personally came and appeared Ernest Weiss, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged that he executed same.